

IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR GRAND COUNTY, STATE OF UTAH

KELLY LAWS,

Petitioner,

vs.

WILLIE GRAYEYES,

Respondent.

RULING and ORDER

Case No. 180700016

Judge Don M. Torgerson

Willie Grayeyes was elected to be a San Juan County Commissioner in the 2018 general election. His defeated opponent in the election, Kelly Laws, has contested the election result by alleging that Grayeyes is ineligible to serve in the office because he is not a resident of San Juan County. The Court conducted a trial on January 22, 2019 to determine the election contest. The Court has also reviewed the parties' written arguments and pretrial motions. Based on the evidence presented, the Court confirms the election result and rules in favor of Grayeyes, as set forth below.

BACKGROUND

The Navajo Mountain/Paiute Mesa community is located in a very remote part of San Juan County and is bisected by the Utah/Arizona border. The area is entirely within the Navajo Nation reservation.

From Monticello, Utah it takes approximately 4 1/2 hours to drive to Navajo Mountain, and a substantial portion of the route is in Arizona. Paiute Mesa is beyond Navajo Mountain and is accessed by crossing a steep canyon on unpaved roads. Although part of San Juan County, Navajo Mountain is much closer to services in Arizona, with travel times of approximately 2 hours from Tuba City, AZ and just under 3 hours from Page, AZ.

With the exception of a school, small senior center, and small health clinic, there are no services in the area. There are no gas stations, laundromats, libraries, or grocery stores. The closest groceries are 40 miles away at Inscription House, AZ. And all mail for the residents of Navajo Mountain/Paiute Mesa is routed through the post office in Tonalea, AZ, 66 miles away. Because the closest Department of Motor Vehicles is located in Arizona, most residents of Navajo Mountain/Paiute Mesa possess Arizona driver's licenses.

On August 9, 2018, Judge David Nuffer of the United States District Court for the District of Utah entered a preliminary injunction in Case No. 4:18-cv-00041 requiring San Juan County to place Grayeyes on the ballot. His residency had been challenged but Judge Nuffer never entered a final opinion about Grayeyes's residency.

FINDINGS OF FACT

1. Grayeyes is a resident of San Juan County living at Navajo Mountain/Paiute Mesa.
2. Grayeyes is a member of the Navajo Nation, has been active in tribal politics throughout his life, and travels often for that work.
3. Grayeyes has been a registered voter continuously in San Juan County since 1984. His voter registration has never been properly challenged.
4. Grayeyes has never been registered to vote in Arizona.
5. As a matter of convenience, Grayeyes has an Arizona driver's license and gets his mail from the post office located at Tonalea, AZ
6. Grayeyes owns an uninhabitable trailer in Page, AZ but has never lived there as his permanent residence. Although he does not have a primary house, he has always maintained his residence at Navajo Mountain/Paiute Mesa.
7. Grayeyes stays the night at Navajo Mountain/Paiute Mesa approximately 60%-80% of the time. He stays with his sister, under a shade hut, or at his daughter's cabin. Other times he is traveling and often stays with a girlfriend in Tuba City, AZ or with an uncle in Arizona.
8. Kelly Laws is a registered voter in San Juan County and was the opposing candidate in the election.

9. Laws knew about residency concerns for Grayeyes sometime in March 2018, as early as the neighborhood caucuses.

10. Laws was also aware of the preliminary injunction issued by Judge Nuffer near the time it was entered on August 9 or 10, 2018.

11. The Complaint filed in this case on December 28, 2018 which was the last business day for the Court within the 40-day statutory period.

12. Laws has never challenged Grayeyes's eligibility to vote or his declaration of candidacy for office.

RULING

I. Petitioner's challenge is untimely.

To file a declaration of candidacy for an election to office, an individual must (1) be a United States Citizen, (2) meet the legal requirements of the office, and (3) state their party affiliation.¹ And under Utah Code § 17-53-202, the legal requirements for the office of county commission are that the candidate be a registered voter of the county which the member represents, and have been a registered voter for at least one year immediately preceding the member's election.

Accordingly, the Court must consider whether Laws ever challenged Grayeyes's voter eligibility or declaration of candidacy in a way that would nullify his voter registration, thereby disqualifying him from candidacy and rendering him "not eligible for the office at the time of the election."²

Under Utah Code §20A-3-202.3, a person may challenge a voter's eligibility by following the strict requirements set forth in that statute.³ Most notably, the challenge must be made in writing and under oath, be delivered to the election official at least 45 days before the date of the election, and the challenge must be determined by the election officer before the day when early voting begins.

¹ Utah Code § 20A-9-201(1).

² Utah Code § 20A-4-402 (1)(b).

³ A voter challenge may also occur at the time of voting under Utah Code § 20A-9-202.5, but the facts of this case do not implicate that process.

Similarly, under Utah Code §20A-9-202(5), a declaration of candidacy is valid unless challenged in writing within five days after the last day for filing. If challenged, the objection must be determined within 48 hours.

Laws never challenged Grayeyes's voter eligibility nor his voter registration according to the required statutory process. Instead, he waited until after the election to challenge Grayeyes's "eligibility to serve in the office to which [he] was elected" under Utah Code § 20A-4-402 (1)(g). It is undisputed that Grayeyes was a registered voter of San Juan County for at least one year before the election, and that he is currently a registered voter of San Juan County. At the time of the election, he met all of the statutory requirements of the office. And he currently meets the statutory requirements of the office. Under Utah Code § 20A-4-402 (1)(b), Grayeyes was eligible for the office at the time of the election.

II. Petitioner's challenge is barred by laches.

Election controversies are equitable proceedings and a party who has failed to exercise reasonable diligence in asserting his rights might be denied relief.⁴ As noted by the Utah Supreme Court, "...equity aids the vigilant, not one who sleeps on his rights."⁵

Where a party wants to challenge the election process, they are required to act at the earliest possible opportunity to avoid disrupting the election process by interfering with the rights of absentee and other voters, candidates, political parties, and others who participate in the election process and spend money and effort toward conducting the election.⁶

In this case, Laws had actual knowledge about the issue of Grayeyes's residency as early as March 2018, when neighborhood caucuses were conducted. He was also aware of the litigation in Federal Court surrounding Grayeyes's residency, and knew that Judge Nuffer had issued a preliminary injunction on August 9, 2018 to compel San Juan County to put Grayeyes back on the ballot.

⁴ See *Ellis v. Swenson*, 16 P.3d 1233, 1239 (Utah 2000).

⁵ *Peck v. Monson*, 652 P.2d 1325, 1328 (Utah 1982) (Oaks, J., concurring).

⁶ See *In re Cook*, 882 P.2d 656, 659 (Utah 1994); *Clegg v. Bennion*, 247 P.2d 614 (Utah 1952); and *Williams v. Rhodes*, 393 U.S. 23 (1968).

Prior to the election, Laws could have challenged Grayeyes's declaration of candidacy under Utah Code § 20A-9-202(5) or his qualification to vote under §20A-3-202.3. And as Grayeyes's direct political opponent, he was one of the individuals most invested in the outcome of the election and had the most reason to conclusively determine the issue of Grayeyes's residency. Had Laws challenged Grayeyes's declaration of candidacy or qualification to vote, the issue would have been decided sometime before the first day of early voting.

But despite knowing about the issue of Grayeyes's residency for at least 7 months before the election, Laws delayed bringing his challenge until after the election was concluded. And, notably, his challenge wasn't actually filed until the last business day of the 40-day period when he could have brought the challenge. Instead of acting at his earliest possible opportunity, Laws acted at his very last possible opportunity. His reasons make sense — he did not want to spend money unnecessarily and he probably expected to win the election. But sensible reasons do not excuse his failure to act at the earliest possible opportunity where the public interest is concerned.

And his delay is prejudicial to important public interest concerns and the integrity of the election process. In supporting Grayeyes, the San Juan County Democratic Party spent at least \$20,000 and hundreds of hours of volunteer time. The Democratic Party was also unable to substitute and support a replacement candidate before the election. Ballots were printed. And some 1,787 votes were cast in the election that would be nullified if the election was not confirmed.

Laws could have challenged Grayeyes's declaration of candidacy and qualification to vote, thereby resolving the issue before public interest concerns became a problem. But considering the entirety of the election process, the Court concludes that Laws waited too long to bring his election challenge even though it was filed within the 40-day limit of Utah Code § 20A-4-403(1)(a).

III. Grayeyes is a resident of San Juan County and is eligible to serve.

As a “county officer”, a county commissioner must maintain “residency” within the county in which he was elected during the officer's term of office.⁷ A person resides

⁷ Utah Code § 17-16-1(2)(a) and § 17-53-101(1)(a)(i).

in Utah if (1) the person's principal place of residence is within Utah; and (2) the person has a present intention to maintain the person's principal place of residence in Utah permanently or indefinitely.⁸ Finally, a "principal place of residence" means the single location where a person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.⁹

In determining a person's principal place of residence, the Court must consider the factors set forth in Utah Code § 20A-2-105(4).¹⁰ Not all of the factors are particularly helpful, but all are addressed below:

a. Where the person's family resides:

Grayeyes has family throughout Utah and Arizona. Importantly, he has a sister in Navajo Mountain with whom he often stays the night. His daughter, April, has a cabin and he stays there too. He is also from Paiute Mesa in the traditional sense — he was raised there, his umbilical cord is buried there, and his family counts the area as their place of origin. And testimony introduced at trial by Petitioner, through Mr. Bitsinnie, indicated that Grayeyes is related to most residents at Paiute Mesa.

b. Whether the person is single, married, separated, or divorced:

Grayeyes is a widower. He has a girlfriend who lives in Tuba City where he sometimes spends the night, often once or twice per week.

c. The age of the person:

Grayeyes is an elderly gentleman of retirement age. And he maintains traditional Navajo cultural practices.

d. Where the person usually sleeps:

The Court considers this factor to be significant. The evidence produced at trial was not credibly refuted by Petitioner. According to the testimony, Grayeyes spends approximately 60% - 80% of his time on Navajo Mountain. He often stays with his sister, Rose, and at his daughter April's cabin. He also spends time with a girlfriend in

⁸ Utah Code § 20A-2-105(3)(a).

⁹ Utah Code § 20A-2-105(1)(a).

¹⁰ Candidly, the Court is not entirely sure how to interpret § 20A-2-105(3)(c)(iv) as it might apply to the unique facts of this case. As it is unnecessary to a resolution of the issues, that question is best left alone for now.

Tuba City, AZ and he spends a lot of his time traveling. It is apparent that Grayeyes spends more time at Navajo Mountain than he does anywhere else.

e. Where the person's minor children attend school:

This factor is also significant. Grayeyes does not currently have minor children. When he did, they went to school primarily in Page, AZ. But the testimony showed that he did not generally reside in Page with them and they returned home on the weekends to work with him and visit him at Navajo Mountain. Grayeyes lived there to keep his livestock and maintain his employment in tribal politics.

f. The location of the person's employment, income sources, or business pursuits:

Grayeyes has spent much of his life involved with tribal politics, as a representative of Navajo Mountain. He traveled (and still travels) extensively in that role and is employed by the Navajo Mountain Chapter of the Navajo Nation. Additionally, he has historically maintained his livestock allotment on Paiute Mesa.

g. The location of real property owned by the person:

Grayeyes owns an uninhabitable trailer in Page, AZ. Petitioner believes this to be a clear indicator that Grayeyes lives in Arizona. But the testimony about the trailer was unrefuted at trial. It was purchased by Grayeyes and his wife to send their children to public school. His wife lived there with the children until her passing in 1987. At that time, Grayeyes moved to the trailer for the term of one school year ('87-'88) to help care for the children. Afterward, he returned to Navajo Mountain to live while the children raised themselves and each other. It was clear at trial that Grayeyes does not live at that trailer and has never lived there as a permanent residence.

It is unclear if Grayeyes is entitled to occupy other lands within the Navajo reservation. He has a grazing permit for Paiute Mesa that allots 15 grazing units. And there was testimony at trial that he may have a legitimate, but disputed, claim to a homesite on Paiute Mesa that is currently in the probate process in Navajo tribal court. But Petitioner did not provide evidence at trial explaining the complexities of Grayeyes's interest in Navajo trust land.

h. The person's residence for purposes of taxation or tax exemption:

This factor is largely irrelevant given Grayeyes's residency within the Navajo Nation reservation.

i. Other relevant factors.

Grayeyes has an Arizona driver's license, gets his mail from a post office in Arizona, buys groceries and gas in Arizona, and accesses critical services in Arizona. But so do all of the other Utah residents at Navajo Mountain/Paiute Mesa. His interactions with Arizona as a matter of convenience are not dispositive of his residency.

More importantly, Grayeyes has been a registered voter in San Juan County since 1984 and has consistently voted in every election since then without his voter registration ever being effectively challenged.

Considering the testimony at trial, in light of the statutory factors, the Court has no problem concluding that Grayeyes maintains his principal place of residence in San Juan County. First, it is apparent that Grayeyes spends more time in Navajo Mountain/Paiute Mesa than he does anywhere else. As much as 80% according to some testimony. He has consistently lived there throughout his life and continues to do so.

Second, he is connected to San Juan County as deeply as any resident of the County. In practice, he has always participated in the voting process in San Juan County. And his rich cultural history adds to his connection -- he has always returned to the area and will always intend to return to the area when he has travelled away.

Finally, the Court is not persuaded by Petitioner's argument that a particular house is required for a person to have a principal place of residence. As long as the location where the person resides is entirely within a voting precinct, the Court believes the "single location where a person's habitation is fixed" could mean a larger geographical area and include various places, particularly for someone like Mr. Grayeyes who observes traditional cultural practices. He may stay on Paiute Mesa under a shade hut during the summer. Or at his daughter's cabin. Or at his sister's house in Navajo Mountain. As long as those all fall within a single voting precinct, that geographical area is sufficient to be a principal place of residence.

CONCLUSION and ORDER

Having considered the testimony at trial and the arguments of the parties, the Court confirms the election result. Respondent will be awarded reasonable costs under Utah Code §20A-4-405 upon submitting appropriate verification.

Dated: 1/29/19

By: 
Don M. Torgerson
District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 180700016 by the method and on the date specified.

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01/29/2019

/s/ CHAY DAVIS

Date: _____

Deputy Court Clerk